

**STATE OF WISCONSIN**  
**Department of Commerce**

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*In the Matter of the PECFA Appeal of*

James M. Ebert

J M Ebert Inc.

30020 Madrid Ln

Mukwonago WI 53149--970

PECFA Claim #53955-9628-90

Hearing #01-217

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**Final Decision**

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**P R E L I M I N A R Y   R E C I T A L S**

Pursuant to a petition for hearing filed May 29, 2001, under §101.02(6)(e), Wis. Stats., and §ILHR 47.53, Wis. Adm. Code, to review a decision by the Department of Commerce, a hearing was commenced on October 25, 2001, at Madison, Wisconsin.

The issue for determination is: **Whether the department's decision dated May 3, 2001 was incorrect with regard to the disputed costs identified in petitioner's appeal dated May 22, 2001 and received by the department May 29, 2001.**

There appeared in this matter the following persons:

**PARTIES IN INTEREST:**

No appearance by Petitioner

Department of Commerce  
PECFA Bureau  
201 West Washington Avenue  
PO Box 7838  
Madison, WI 53707-7838

By: Jean Beckwith  
PEFCA Grant Reviewer  
Department of Commerce  
201 W. Washington Ave., Rm 322A  
PO Box 7838  
Madison, WI 53707-7838

The authority to issue a final decision in this matter has been delegated to the undersigned by order of the Secretary dated September 18, 2001.

The matter now being ready for decision, I hereby issue the following

### FINDINGS OF FACT

The appellant, J M Ebert, Inc. by James Ebert; operates a convenience store on the property. The appellant submitted its claim for reimbursement of interest costs that it incurred in the remediation of the petroleum-contaminated site in question in the total amount of \$597.47. The amount of interest was not considered in the original decision so the appeal process was not the correct forum to resolve the issue. At the hearing, the department pursuant to §22746(1)(e) & (g), Stats, moved to dismiss the appeal for mootness. That the facts establishing mootness are as follows:

1. On May 29, 2001, the petitioner-appellant, James M. Ebert, filed an appeal in this matter. The appeal is contained in the referral to the administrative law judge.
2. The appeal is from a decision by the department dated May 3, 2001, which is contained in the referral to the administrative law judge. The department's decision denies specific cost items for reasons listed in the column headed "Reason for non-eligible costs."
3. The appellant has identified the costs he is appealing in that appeal letter.
4. The department has agreed to pay all of the costs that the appellant has appealed.
5. The department has made a full settlement offer to the appellant. The offer is attached as Exhibit 1.
6. The department has received no response to its full settlement offer.
7. The department has been unable to contact the appellant by telephone prior to this hearing in order to resolve this matter.
8. The parties to this matter have no issues in dispute.

### APPLICABLE STATUTES AND CODE PROVISIONS

Wisconsin Stats. § 227.46(1)(e) & (g), provides, in part, as follows:

(1). Except as provided under 227.43(1), an agency may designate as official of the agency or an employee on its staff or borrowed from another agency under s. 20.901 or 230.047 as a hearing examiner to preside over any contested case. In hearings under s. 19.52, a reserve judge shall be appointed. Subject to rules of the agency, examine presiding as hearings may:

...

(e) Regulate the course of the hearing

...

(g) Dispose of procedural or similar matters.

### **DISCUSSION**

The department did not deny the interest as appeal in petitioner's appeal. In fact, after a re-review of the claim, the department offered to settle the claim for the full amount of the interest claimed in the appeal. The petitioner did not contact the department or return the settlement agreement prior to the hearing date. The department established that there are no issues in dispute in this matter.

### **CONCLUSIONS OF LAW**

The appellant was an owner or agent of a property covered by the remedial provision of Wis. Stats. 101.143.

The department and petitioner have resolved all issues outlined in the petitioner's appeal dated May 22, 2001 and received by the department on May 29, 2001.

### **FINAL DECISION**

That the department's motion to dismiss this matter for mootness is hereby granted.

It is further ordered that the appellant be given a period of 14 days to respond in writing with any argument in opposition to this motion. In addition, no payment shall be ordered sent to the appellant until such time as the department receives an executed copy of the settlement agreement and written verification from the appellant of the appellant's mailing address. That the decision dismissing the appeal for mootness order the department to pay the costs appealed in this matter, as outlined in the settlement agreement attached hereto as Exhibit 1.

### **NOTICE TO PARTIES**

#### **Request for Rehearing**

This is a final agency decision under §227.48, Stats. If you believe this decision is based on a mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision and which you could not have discovered sooner through due diligence. To ask for a new hearing, send or deliver a written request to Rehearing Request, Department of Commerce, Office of Legal Counsel, 201 W. Washington Avenue, 6<sup>th</sup> Floor, PO Box 7970, Madison, WI 53707-7970. Rehearing requests may

also be filed by fax at the following number: (608) 266-3447. Faxed rehearing requests received after 4:30 p.m. on a business day will be filed effective the next business day.

Send or fax a copy of your request for a new hearing to all the other parties named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the hearing examiner made and why it is important. Or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain how your request for a new hearing is based on either a mistake of fact or law or the discovery of new evidence which could not have been discovered through due diligence on your part, your request will have to be denied.

Your request for a new hearing must be received no later than 20 days after the mailing date of this decision as indicated below. Late requests cannot be granted. The process for asking for a new hearing is in Sec. 227.49 of the state statutes

#### Petition For Judicial Review

Petitions for judicial review must be filed no more than 30 days after the mailing date of this hearing decision as indicated below (or 30 days after a denial of rehearing, if you ask for one). The petition for judicial review must be served on the Secretary, Department of Commerce, Office of the Secretary, 201 W. Washington Avenue, 6<sup>th</sup> Floor, PO Box 7970, Madison, WI 53707-7970.

The petition for judicial review must also be served on the other "PARTIES IN INTEREST" and counsel named in this decision. The process for judicial review is described in Sec. 227.53 of the statutes.

Dated: October 30, 2001.

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Joseph R. Thomas  
Administrative Judge  
Department of Commerce  
PO Box 7970  
Madison WI 53707-7970

copies to:

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30020 Madrid Ln

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UI Madison Hearing Office  
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Madison WI 53707-7975

John A. Kisiel  
Department of Commerce  
201 W. Washington Ave., Rm 322A  
PO Box 7838  
Madison WI 53707-7838

In Person

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Date Mailed: \_\_\_\_\_

Mailed By: \_\_\_\_\_